IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9201 OF 2004

Devendra Himmatlal Solanki
Prop. of M/s Dev-Indra Pharma .. Petitioner

V/s

State of Maharashtra & Anr. .. Respondents

Mr.S.G. Deshmukh for the Petitioner.

Mrs.M. Thakur, A.G.P. for the Respondents.

CORAM : H.L. GOKHALE &
MRS. R.S. DALVI, JJ.

DATE : 5TH JULY 2005

P.C. :

1. Heard Mr.Deshmukh for the Petitioner. Mrs.Thakur, A.G.P. appears for the Respondents.

2. The petition seeks to challenge the order passed by the Minister of State (Food & Drugs) on 18th March 2004 dismissing the appeal preferred by the Petitioner against the order dated 9th October 2003 passed by the Commissioner, Food & Drugs Administration of the State of Maharashtra. The two licenses in Form Nos.25 and 28, which the Petitioner had under the Drugs & Cosmetics Act, 1940, stood cancelled under the order dated 9th October 2003 which has come to be confirmed by order passed by the Minister. The Minister’s order was

followed by the actual cancellation of these licenses by a subsequent communication dated 14th October 2004 which is also under challenge.

3. The case of the Petitioner is that he was a small manufacturer manufacturing the drugs and filling capsules for other companies including one Uni Cross Laboratories. It so happened that two Drug Inspectors Mr.Kale and Mr.Gandhi visited the factory of the Petitioner on 34d February 2003 when following serious irregularities were noted as stated in the petition.

"(i) During the visit Petitioner had not provided with the Inspection Book in Form 35.

(ii) Stock of 300 unlabelled capsules was found in premises.

(iii) In the month of December and January, 10 lac capsules of Pirexican capsules - 20 mg. were manufactured by the Petitioner for which no licence was taken.

(iv) Stock of 31 kgs. of bulk Pirexican

was found in the premises and no label was affixed on the said stock.

(v) No manufacturing and testing record was kept for Pirexican 20 capsules."

4. In view of these serious irregularities, a show cause notice was given to the Petitioner. He was given a hearing and thereafter the above referred order by the Food and Drugs Administration came to be passed on 9th October 2003. In the Appeal preferred to the Minister, the Petitioner admitted the contravention, but did not give any satisfactory explanation. The order of the Minister is a short one, but it takes note of the fact that looking at the serious nature of the contravention, namely manufacturing of drugs without licence, it was deemed fit to confirm the order.

5. Now, as can be seen from the irregularities, the Petitioner did not have the manufacturing or the testing records for the Piroxicam capsules, he did not have the licence for manufacturing these capsules, Pirexican powder was found stocked in his factory to the extent of 31 kgs. and no label was affixed on that stock. All this was being done for another

laboratory. That was the submission of the Petitioner. Whether it was done for somebody or for himself, it was clearly a manufacture for sale or for distribution of drugs and for that the necessary licence had to be obtained under Section 18(c) of the Drugs & Cosmetics Act, 1940. The very fact that the stock of the medicine found was as large as 31 kgs. itself shows that it was meant for manufacture and sale. The show cause notice also recorded that the Petitioner had manufactured some 30 lacs capsules without licence during December 2002 to January 2003.

6. The only submission of Mr.Deshmukh was that the Petitioner should be permitted to do this business since sufficient time has gone after the impugned order was passed, and it is for this reason that notice was given to the Respondents. Mrs.Thakur, learned A.G.P. appearing for the Food & Drugs Administration, pointed out that in view of this gross violation of the statutory requirements, the impugned actions became necessary. She submitted that if manufacturing is permitted without licence, then there would be no control on such manufacturers.

7. What we find is that due process has been followed. There is a power in the authorities to take

the necessary action and they have taken it in accordance with law. The Petitioner has been provided a hearing at the trial level and thereafter remedy of appeal has also been exhausted. It is true that the Petitioner will not carry on this business as a consequence of this order, but that one cannot help. The question is concerning the lives of hundreds and thousands who buy such medicine and this being so, the Food & Drugs Administration cannot be faulted if they take such an action in the interest of the society at large. There is no other merit in the petition. Petition is dismissed.

(H.L. GOKHALE, J.)

(MRS. R.S. DALVI, J.)